IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 13149 of 2007(M)

PETITIONER:

THE SECRETARY,QUILON DISTRICT MOTOR TRANSPORT WORKERS CO-OPERATIVE SOCIETIES LTD, NO.Q.420,KOLLAM.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
----

1. **THE REGIONAL TRANSPORT AUTHORITY, KOLLAM.**

2. **THE SECRETARY,REGIONAL TRANSPORT AUTHORITY,KOLLAM.**

3. **STATE TRANSPORT APPELLATE AUTHORITY, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13149/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PERMIT.

EXT.P2:- COPY OF THE ENDORSEMENT SHOWING THE LAST DATE. OF RENEWAL.

EXT.P3:- COPY OF THE PROCEEDINGS OF THE RTA DT. 25.1.03.

EXT.P4:- COPY OF THE JUDGMENT IN OP. NO.9012/03 DT. 1.5.10.05.

EXT.P5:- COPY OF THE COVERING LETTETR SUBMITTED ALONG WITH THE JUDGMENT DT. 15.12.05.

EXT.P6:- COPY OF THE ORDER OF THE RTA DT. 29.5.06.

EXT.P7:- COPY OF THE JUDGMENT IN WP. 21978/06 DT. 29.9.06.

EXT.P8:- COPY OF THE PROCEEDINGS OF THE RTA DT. 3.11.06.

EXT.P9:- COPY OF THE TEMPORARY PERMIT DT. 16.12.06.

EXT.P10:- COPY OF THE JUDGMENT IN MVAA. NO.60/07 DT. 9.4.07.

/TRUE COPY/

P.S. TO JUDGE

tss

ANTONY DOMINIC, J.

W.P.(C) 13149 OF 2007

Dated: December 7, 2007

JUDGMENT

Ext.P7 is a judgment of this court in WP(C) 21978/2006 wherein this court has directed the 1st respondent to consider and pass orders on the application for renewal of the permit submitted by the petitioner on 3.3.06 in accordance with law. When the matter thus reached the 1st respondent, by Ext.P8 order it rejected the application of the petitioner referring to the judgment in WP(C) 9012/2003 and without referring to Ext.P7 judgment. The reason for the rejection appears to be that the bus offered by the petitioner was more than 15 years old. This decision of the RTA is seen confirmed in Ext.P10 judgment of the STAT in MVAA No.60/2007 filed by the petitioner. Here again, the reasoning appears to be that though the petitioner had offered a vehicle as on 15.12.2005 for replacement, since the petitioner had not replaced the vehicle as on 31.3.04, there was no valid permit and hence renewal cannot be granted. It is on this basis, Ext.P8 order of the RTA had been confirmed by the STAT.

2. First of all, both the authorities have not taken into account the directions issued by this court in Ext.P7 judgment. That apart, the issue of replacement of the vehicle is covered by the decision of this court in *Aysha*

v. RTA, Kasaragod- 2006 (3) KLT 1013, paragraph 6 thereof states as follows:-

> Going by the law as it stands, including the position propounded by this Court in *Alavikutty*'s case (2005(1) KLJ 205) a ready vehicle is not required at the time of consideration of the question for grant of permit and the current records need be produced only for the purpose of issuance of permit following the grant. So much so, the grant in favour of a person as an operator is not dependent upon the availability of a vehicle to be operated following the grant. The availability of a vehicle is not relevant for the grant but for the issuance of the permit. S.86 does not provide the non-availability of vehicle as a ground for cancellation of permit. All that law requires is that the permit should be availed within the outer limit prescribed by the Act and the Rules. S.86 of the Motor Vehicles Act does not provide non-replacement of a vehicle or the non-availability of a vehicle that is being plied under a permit as a ground for cancellation of permit. The embargo on the permit holder is that after 31.3.2004, a stage carriage, which would have become 15 years' old by then, could not be plied. This does not, by itself, mean that the operator could not have brought a ready vehicle later on, during the currency of the permit. Therefore, the fact that the vehicle has attained the age of more than 15 years is no ground to cancel the permit

> and an operator, who has permit in his favour, is entitled to bring in another proper vehicle during the currency of the permit."

In view of the law as laid down by this court in the aforesaid judgment, the reasoning adopted by the RTA and the STAT cannot be sustained.

3. Therefore quashing Exts.P8 and P10, I dispose of this writ petition directing that the application submitted by the petitioner shall be reconsidered by the 1st respondent as expeditiously as possible, at any rate, within 8 weeks of production of a copy of this judgment. Needless to say that while reconsidering the matter, the direction issued by this court in Ext.P7 judgment shall be duly adverted to.

ANTONY DOMINIC, JUDGE

mt/-